

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW MEXICO**

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GEORGE WHEELER, et al.,

Plaintiffs,

v.

CIV-01-1164 WJ/WWD

TERRY SCARAFIOTTI, et al.,


Defendants.

**MEMORANDUM OPINION AND ORDER DENYING**  
**PLAINTIFFS' MOTION TO AMEND**

THIS MATTER comes before the Court pursuant to Plaintiffs' Motion to File First Amended Complaint [Docket No. 33]. Having reviewed the submissions of the parties, the Court finds that the motion is moot and the amendment would be futile.

By order filed on August 28, 2002, [Docket No. 41], this Court granted Defendants' Joint Motion for Partial Summary Judgment No. II and dismissed Plaintiffs' Count I as barred by the principles stated in Heck v. Humphrey, 512 U.S. 477 (1994). Plaintiffs' proposed First Amended Complaint adds factual allegations to support Count I. Because Count I has been dismissed, the amendment to the complaint would be futile, and the motion to amend has become moot.

IT IS THEREFORE ORDERED that Plaintiffs' Motion to File First Amended Complaint [Docket No. 33] is hereby DENIED.

  
UNITED STATES DISTRICT JUDGE